

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RONNIE COLE,

Plaintiff,

-v.-

CITY OF NEW YORK and KISA SMALLS,

Defendants.

20 Civ. 3981 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

Jean Azor-El, Anthony Medina, James Carter, Dakwan Fennell, Lance Kelly, Ramon Gomez, Antonio Graham, Anthony Brown, Ronnie Cole and Plaintiff Maurice Barnar jointly signed and filed their pro se complaint under 42 U.S.C. § 1983. Plaintiffs purported to bring this action as a class action.

By Order dated May 18, 2020, the Court outlined the reasons why the case could not proceed as a class action, severed the claims, and directed the Clerk of Court to open new actions for each plaintiff. On June 15, 2020, the Court consolidated these individual actions under Rule 42(a) as to all plaintiffs except for Ronnie Cole and Maurice Barnar, Plaintiff in this action, because they had not yet submitted requests to proceed *in forma pauperis* (IFP). *Azor-El v. New York City Dep't of Corr.*, No. 20 Civ. 3650 (KPF), Dkt. #5 (S.D.N.Y. June 15, 2020). By Order dated July 21, 2020, the Court consolidated Maurice Barnar's case after receiving and approving Barnar's request to proceed IFP.

**A. Motion to Reopen**

By Order dated November 4, 2020, after *sua sponte* granting Cole two extensions to file a request to proceed IFP, the Court terminated Cole's case

when Cole failed to pay the filing fee or submit an IFP application. (Dkt. #7). On December 18, 2020, *pro bono* counsel appeared on behalf of the consolidated Plaintiffs and sought to reopen Cole's case and to represent him in this consolidated action. (See Dkt. #9). By Order dated December 21, 2020, the Court provisionally granted Cole's motion to reopen, pending receipt of Cole's IFP application by January 15, 2021. (Dkt. #10). By letter dated February 26, 2021, Plaintiffs' counsel sought an extension to remit the filing fee on behalf of Cole (Dkt. #39), which request the Court granted the following day (Dkt. #41). Thereafter, on March 3, 2021, Plaintiffs' counsel paid the filing fee in this action. Accordingly, the Court hereby grants Plaintiff's motion to reopen this case. (See Dkt. #10).

## **B. Consolidation**

Under Rule 42 of the Federal Rules of Civil Procedure, a district court may consolidate one civil action with another civil action pending in the same court if both actions "involve a common question of law or fact." Fed. R. Civ. P. 42(a)(2). When actions are consolidated, they are "join[ed] together ... without ... los[ing] their independent character." *Hall v. Hall*, 138 S. Ct. 1118, 1124-25 (2018). "The proper solution to the problems created by the existence of two or more cases involving the same parties and issues, simultaneously pending in the same court [is] to consolidate them under Rule 42(a)." *Miller v. USPS*, 729 F.2d 1033, 1036 (2d Cir. 1984).

"A district court can consolidate related cases under [Rule 42(a)] *sua sponte*." *Devlin v. Transp. Commc'ns Int'l Union*, 175 F.3d 121, 130 (2d Cir.

1999). And “[i]n assessing whether consolidation is appropriate ... a district court should consider both equity and judicial economy.” *Id.* But “efficiency cannot be permitted to prevail at the expense of justice — consolidation should be considered when ‘savings of expense and gains of efficiency can be accomplished *without sacrifice of justice.*’” *Id.* (citation omitted, emphasis in original).

For the reasons enumerated in this Court’s order dated June 15, 2020, *see Azor-El v. New York City Dep’t of Corr.*, No. 20 Civ. 3650 (KPF), Dkt. #5 (S.D.N.Y. June 15, 2020), both equity and judicial economy support the consolidation of this case with the related cases that this Court has already consolidated. The Clerk of Court is therefore directed to consolidate this case with the cases consolidated as *Azor-El v. New York City Dep’t of Corr.*, No. 20 Civ. 3650 (KPF).

### **CONCLUSION**

For the foregoing reasons, Plaintiff’s motion to reopen is granted, and the Clerk of Court is directed to reopen this case and to consolidate this case with the cases already consolidated as *Azor-El v. New York City Dep’t of Corr.*, No. 20 Civ. 3650 (KPF).

SO ORDERED.

Dated: March 4, 2021  
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Faila".

---

KATHERINE POLK FAILLA  
United States District Judge